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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

LETICIA ZAMORA and DANIEL PEREZ and
ELIZABETH PEREZ,

No.: C 07 4603 JSW

FIRST AMENDED JOINT RULE 26(F) REPORT AND CASE MANAGEMENT CONFERENCE STATEMENT

vs.
WACHOVIA CORPORATION and WORLD
SAVINGS BANK ,
Defendants.

Case Management Conference
Date : February 1, 2008
Time: 1:30 p.m.
Place: Ctrm. 2

The Honorable Jeffrey S. White

The parties, by and through their respective counsel of record, have conducted good faith meet and confer conferences for the purpose of discussing the issues addressed in Federal Rule of Civil Procedure 26(f) and Civil Local Rule 16-9.

Counsel hereby respectfully submit the following joint report reflecting the matters on which they agree and expressing their respective views concerning the issues on which they disagree.

1 **1. Jurisdiction and Service.**

2 This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Plaintiffs' 3 First Amended Class Action Complaint asserts claims against defendant World Savings Bank, FSB 4 (now renamed "Wachovia Mortgage, FSB) ("World," or "Defendant") for violations of the Equal 5 Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*, violations of the Fair Housing Act, 42 U.S.C. § 6 3601 *et seq.* and the Civil Rights Act, 42 U.S.C. §§ 1981 and 1982.

7 All parties have been served. This matter is at issue. World filed an Answer to Plaintiff's 8 Complaint on September 28, 2007. Defendant Wachovia Corporation ("Wachovia"), a financial 9 holding company organized under the Bank Holding Company Act of 1956, filed a Motion to 10 Dismiss on September 28, 2007. Pursuant to the parties' stipulation, on November 16, 2007, this 11 Court entered an Order dismissing Wachovia without prejudice.

12 **2. Facts.**

13 **A. Plaintiffs' Factual Contentions.**

14 Plaintiffs Leticia Zamora and Daniel and Elizabeth Perez ("Plaintiffs") bring this proposed 15 class action on behalf of themselves and all similarly situated minority borrowers alleging that 16 World has engaged in both intentional and disparate impact race discrimination in originating, 17 funding, acquiring and servicing residential mortgage loans. Plaintiffs each are members of a 18 protected minority group, and each purchased a residential mortgage loan from Defendants within 19 the time frame required by all statutes of limitation relevant herein. Plaintiffs' First Amended Class 20 Action Complaint asserts four (4) Causes of Action: for violation of the Equal Credit Opportunity 21 Act (15 U.S.C. §§1691-1691f; for violation of the Fair Housing Act (42 U.S.C. §§3601-3619); for 22 racial discrimination under 42 U.S.C. §1981; and for racial discrimination in violation of 42 U.S.C. 23 §1982.

24 Plaintiffs allege that Defendant engaged in unlawful racial discrimination by developing and 25 implementing mortgage pricing policies and procedures that provide financial incentives to its 26 authorized loan officers, mortgage brokers and correspondent lenders to make subjective decisions 27 causing minority borrowers to pay higher interest rates, charges and other costs than similarly 28 situated white borrowers. Defendant's authorized loan officers, mortgage brokers and correspondent

1 lenders are given discretion - and are actually encouraged - to increase interest rates and charge
2 additional fees to certain borrowers. These policies result in minorities receiving home loans with
3 higher fees, such as yield-spread premiums, as well as higher rates and costs and other (such as
4 prepayment penalties) that are more unfavorable than the loan terms received similarly situated non-
5 minority borrowers. Thus, for example, when minority borrowers pay yield spread premiums on
6 loans including pre-payment penalties, Defendant shares in additional income and profits generated
7 by the premium as the borrower is locked into a higher interest rate. Defendant's systemic policies
8 and procedures, which encourage subjective underwriting and pricing decisions, result in a pattern of
9 discrimination against minorities. Defendant cannot justify these policies by business necessity, and
10 the discriminatory outcome could be avoided through the use of alternative underwriting and pricing
11 policies and procedures.

12 **B. Defendant's Factual Contentions.**

13 World originates and funds mortgage loans. Borrowers may obtain the mortgage loans
14 through loan officers or referrals which come from outside brokers not affiliated with World. World
15 denies Plaintiffs' claims. Specifically, World denies that it engaged in any racially discriminatory
16 mortgage lending practices and denies that any of the purported putative class members have been
17 subject to racial discrimination. World denies that its credit pricing policies and procedures in any
18 way impose higher rates and fees on minority mortgage borrowers than similarly situated non-
19 minority mortgage borrowers. World maintains credit pricing policies and procedures and World's
20 policies and procedures include policies and procedures to enforce compliance with fair lending
21 procedures, and review of loans for compliance with fair lending procedures. World contends that
22 Plaintiffs were not discriminated against and did not pay any fee or interest rate unrelated to their
23 creditworthiness or risk.

24 **3. Legal Issues.**

25 (1) Whether Plaintiffs may maintain a class action pursuant to Federal Rule of
26 Civil Procedure Rule 23, and, if so, the scope of the purported class;

27 (2) Whether World's residential mortgage lending policies and procedures violate
28 the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*;

(3) Whether World's residential mortgage lending policies and procedures violate the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*;

(4) Whether World's residential mortgage lending policies and procedures violate the Civil Rights Act, 42 U.S.C. §§ 1981 and 1982;

(5) Whether World has any discriminatory credit pricing policies and/or whether World's credit pricing policies impose higher rates and fees on minority mortgage borrowers than similarly situated non-minority mortgage borrowers;

(6) Whether Plaintiffs' claims are barred by the applicable statutes of limitations, including, without limitation, 15 U.S.C. § 1691e(f), 42 U.S.C. § 3613(a)(1)A and 28 U.S.C. § 1658(a);

(7) Whether Plaintiffs' claims are barred by the doctrines of waiver, estoppel or consent because Plaintiffs accepted the terms of loans and accepted funds pursuant to the terms of the loan contracts;

(8) Whether Defendant engages in discriminatory practices, acts with discriminatory intent and/or whether Defendant's lending policies and procedures have an impermissible disparate impact on minority borrowers;

(9) Whether Plaintiffs and the proposed class is entitled to injunctive relief, monetary relief, other equitable relief, costs of suit, attorneys' fees and/or punitive damages.

4. Motions.

A. Pending Motions.

No motions are currently pending before this Court.

B. Anticipated Pretrial Motions.

Plaintiffs will file a motion for entry of Pretrial Order No. 1 appointing interim class counsel pursuant to Rule 23(g), establishing an organizational structure of Plaintiffs' counsel and establishing procedures for subsequently filed related cases, among other things. Plaintiffs will circulate the proposed motion to seek consent of Defendant prior to filing the motion with the Court.

1 Plaintiffs also intend to file a motion, if the parties are unable to resolve the issues by
2 stipulation, for entry of an order requiring the parties to preserve documents and information and a
3 protocol for the conduct of electronic discovery in this case. *See* Section 6, herein.

4 Plaintiffs will file a motion for class certification. *See* Section 9, herein, for a proposed
5 scheduling order relating to Plaintiffs' certification motion.

6 The extent and degree of discovery motion practice, if any, is presently unknown.

7 Defendants anticipate filing of a motion for summary judgment pursuant to Federal Rules of
8 Civil Procedure Rule 56, or other dispositive motion(s).

9 The parties anticipate that discovery in this action may include the discovery of confidential,
10 proprietary and trade secret information and/or information protected by privacy rights, and,
11 accordingly, in order to facilitate discovery, have engaged in negotiations regarding a Stipulation
12 and Proposed Protective Order governing the treatment of confidential information. The parties
13 intend to submit such a stipulation and proposed protective order to this Court. In the event any
14 party seeks to file any information designated as confidential pursuant to any Protective Order
15 entered in this case, the party shall seek an Order authorizing the sealing of the document or portions
16 thereof pursuant to Civil Local Rule 79-5.

17 In accordance with Local Rule 26-1, counsel for the parties have discussed the complexity of
18 this case. Counsel agree that certain procedures of the Manual for Complex Litigation may be useful
19 for the management of this action. The parties intend to consult the Manual for Complex Litigation
20 to assess whether specified procedures should be utilized as the case progresses.

21 **5. Amendment of Pleadings.**

22 The parties propose that the deadline to amend the complaint be May 9, 2008.

23 **6. Evidence Preservation.**

24 World has undertaken steps to preserve evidence relevant to the issues reasonably evident in
25 this action, including interdiction of any document-destruction program and any ongoing erasures of
26 e-mails, voice mails and other electronically-recorded material reasonably believed to be relevant to
27 the issues reasonably evident in this action.

1 **7. Disclosures.**

2 The parties anticipate exchange of their Initial Disclosures pursuant to Federal Rule of Civil
 3 Procedure 26(a)(1) on February 25, 2008.

4 **8. Discovery.**

5 **A. Discovery Subjects, Phased Discovery and Completion of Discovery**

6 Following the conferences of counsel, the parties agree upon the following proposed pre-trial
 7 schedule:

Parties' initial expert reports re class certification issues	September 5, 2008
Parties' rebuttal expert reports re class certification issues	September 26, 2008 (Defendant)
	October 17, 2008 (Plaintiffs)
Completion of expert discovery re class certification	October 30, 2008
Non-expert discovery cut-off	June 26, 2009
Expert discovery cut-off	August 28, 2009

14 **B. Discovery Limitations.**

15 The parties request a maximum of thirty (30) depositions per side and that the parties be
 16 permitted to serve fifty (50) interrogatories and fifty (50) document requests per side.

17 **9. Class Actions.**

18 Pursuant to Local Rule 16-9(h), Plaintiffs assert this action is maintainable as a class action
 19 pursuant to sections (a), (b)(2) and/or (b)(3) of Rule 23 of the Federal Rules of Civil Procedure. The
 20 First Amended Class Action Complaint defines the class generally as: all minorities(non-Caucasians
 21 and other minority racial groups protected under 42 U.S.C. §§ 1981, 1982, 3604 and 15 U.S.C. §
 22 1961) who have entered into residential mortgage loan contracts that were financed or purchased by
 23 World, and who have been subject to racial discrimination.

24 Named Plaintiffs Leticia Zamora, Daniel Perez and Elizabeth Perez allege they are entitled to
 25 maintain the action under Federal Rules of Civil Procedure Rule 23. In accordance with Local Rule
 26 16-9(b), Plaintiffs assert that the facts which show Plaintiffs' entitlement to maintain the action under
 27 Fed. R. Civ. P. 23 include the following: the Class consists of many thousands, or tens of thousands,
 28 of individuals geographically dispersed throughout the United States; all members of the Class have

1 been subjected to and affected by Defendant's practice of assessing yield spread premiums and other
2 discretionary fees and imposing other adverse terms and features on mortgage loans; Plaintiffs and
3 the other members of the proposed class were subjected to yield spread premiums and other
4 discretionary charges and fees and other terms that have disproportionately affected minority
5 borrowers; Plaintiffs are committed to vigorous prosecution of the class claims and have retained
6 attorneys who have extensive experience in class actions and consumer protection and credit
7 discrimination actions; and Defendant has acted or refused to act on grounds generally applicable to
8 the proposed class. *See L.R. 16-9(b)(3).*

9 Pursuant to the proposed pretrial schedule as set forth herein, Plaintiffs request a deadline to
10 file their motion for class certification on or before November 3, 2008.

11 **10. Related Cases.**

12 The parties do not know of any related proceedings at this time.

13 **11. Relief.**

14 Plaintiffs primarily seek injunctive relief to prohibit the discriminatory practices of
15 defendant. Plaintiff also may seek other equitable relief including restitution, monetary relief and
16 punitive damages.

17 Defendant's investigation of Plaintiffs claims is ongoing. While Defendant asserts Plaintiffs
18 have not alleged any basis upon which liability may be established, Defendant reserves its right to
19 submit to this Court the basis upon which Defendant contends damages should be calculated if
20 liability is established. Defendant contends that if liability is established, there is no basis on which
21 to assert punitive damages.

22 **12. Settlement and ADR.**

23 The parties have conferred concerning the likelihood of settlement. There have been no
24 settlement negotiations thus far. In accordance with Local Rule 16-8 and Alternative Dispute
25 Resolution Local Rule 3-5, the parties submitted a Stipulation re Selecting ADR Process, and on
26 November 27, 2007 this Court entered an Order directing the parties to meet and confer within 30
27 days to determine whether a private ADR process will facilitate an early resolution of the case. The
28

1 parties have not yet reached agreement on this subject, but remain willing, and intend, to engage in
2 further discussions.

3 **13. Consent to Magistrate Judge for all Purposes.**

4 The parties do not consent to a Magistrate Judge for all purposes.

5 **14. Other References.**

6 The parties do not believe this case is suitable for other reference at this time.

7 **15. Narrowing of Issues.**

8 At this stage in the proceedings, the parties are unaware of any issues that can be narrowed
9 by agreement or motion, other than the anticipated motions set forth in section 4, herein. The parties
10 agree to continue to meet and confer regarding these issues and to inform this Court as applicable in
11 the event discovery indicates agreement may be reached regarding the scope of any issues or reveals
12 any additional basis to narrow the issues through motion practice.

13 **16. Expedited Schedule.**

14 The parties agree this case is not appropriate for an expedited or streamlined procedure.

15 **17. Scheduling.**

16 Pursuant to their conferences of counsel, the parties propose the pre-trial and trial schedule
17 attached hereto as Exhibit A.

18 **18. Trial.**

19 All parties request a jury trial.

20 **19. Disclosure of Non-party Interest Entities or Persons.**

21 Pursuant to Civil Local Rule 3-16, all parties have filed a Certification of Interested Entities
22 or Persons.

23 Pursuant to Civil Local Rule 3-16, World restates and certifies that the following listed
24 persons, associations of persons, firms, partnerships, corporations (including parent corporations) or
25 other entities (i) have a financial interest in the subject matter in controversy or in a party to the
26 proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be
27 substantially affected by the outcome of this proceeding: Golden West Financial Corporation, of
28 which World Savings Bank, FSB is a subsidiary.

1 **20. Other Matters.**

2 The parties do not have any additional matters to raise at this time.

4 DATED: January 25, 2008.

5 BONNETT, FAIRBOURN, FRIEDMAN & BALINT,
6 P.C.

7 By /s/ Andrew S. Freidman

8 Andrew S. Freidman
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13 DATED: January 25, 2008.

14 REED SMITH LLP

15 By /s/ Heather B. Hoesterey

16 Jack R. Nelson
17 Tyree P. Jones, Jr.
18 Heather B. Hoesterey
19 Attorneys for Defendant
20 World Savings Bank, FSB

21 DOCSSFO-12504856.1

Proposed Pre-Trial Scheduling

Pretrial or Trial Event	Parties' Requested Deadline
Initial Disclosures	February 25, 2008
Deadline to Amend Pleadings	May 9, 2008
Last day to file Motion for Class Certification	November 3, 2008
Opposition to Motion for Class Certification	December 22, 2008
Reply in Support of Motion for Class Certification	January 26, 2009
Opening Expert Witness Disclosure and Reports [see F.R.Civ.P. 26(a)(2)] re Class Certification	September 5, 2008
Rebuttal Expert Witness Disclosure re Class Certification	September 26, 2008 (for defendant) October 17, 2008 (for plaintiff)
Expert Discovery Cut-Off Date re Class Certification	October 30, 2008
Non-expert discovery cut-off date	June 26, 2009
Expert discovery cut-off date	August 28, 2009
Last day for hand-serving motions and filings (other than Motions in Limine)	October 30, 2009
Parties to meet and confer to prepare joint final pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material	Parties meet and confer following resolution of class certification motion
Filing Joint Pretrial Conference Statement and Proposed Order	Parties meet and confer following resolution of class certification motion
Lodging exhibits and other trial materials	Parties meet and confer following resolution of class certification motion
Last day to serve and file briefs on disputed issues of law, including procedural and evidentiary issues	Parties meet and confer following resolution of class certification motion

Pretrial or Trial Event	Parties' Requested Deadline
Serve and file requested <i>voir dire</i> , jury instructions and forms of verdict	Parties meet and confer following resolution of class certification motion
Serve and file statements designating deposition excerpts, form interrogatory answers and responses to requests for admission to be offered at trial other than for impeachment or rebuttal	Parties meet and confer following resolution of class certification motion
Last day to meet and confer regarding objections to evidence	Parties meet and confer following resolution of class certification motion
Final Pretrial Conference and Hearing on Motions in Limine	Parties meet and confer following resolution of class certification motion
Trial Date	Parties meet and confer following resolution of class certification motion